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Part 1

PUBLIC LAND RENEWABLE ENERGY DEVELOPMENT ACT OF 2019

DECEMBER 18, 2020.—Ordered to be printed

Mr. GRIJALVA, from the Committee on Natural Resources, submitted the following

R E P O R T

[To accompany H.R. 3794]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 3794) to promote the development of renewable energy on public lands, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Public Land Renewable Energy Development Act of 2019".

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

SEC. 3. DEFINITIONS.

In this Act:

(1) COVERED LAND.—The term "covered land" means land that is—

(A) public lands administered by the Secretary; and

(B) not excluded from the development of geothermal, solar, or wind energy under—

(i) a land use plan established under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); or

(ii) other Federal law.

(2) EXCLUSION AREA.—The term "exclusion area" means covered land that is identified by the Bureau of Land Management as not suitable for development of renewable energy projects.

(3) FEDERAL LAND.—The term "Federal land" means—

(A) land of the National Forest System (as defined in section 11(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1609(a))); or

(B) public lands.

(4) FUND.—The term "Fund" means the Renewable Energy Resource Conservation Fund established by section 10(c)(1).

(5) PRIORITY AREA.—The term "priority area" means covered land identified by the land use planning process of the Bureau of Land Management as being a preferred location for a renewable energy project, including a designated leasing area (as defined in section 2801.5(b) of title 43, Code of Federal Regulations (or a successor regulation)) that is identified under the rule of the Bureau of Land Management entitled "Competitive Processes, Terms, and Conditions for Leasing Public Lands for Solar and Wind Energy Development and Technical Changes and Corrections" (81 Fed. Reg. 92122 (December 19, 2016)) (or a successor regulation).

(6) PUBLIC LANDS.—The term "public lands" has the meaning given that term in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702).

(7) RENEWABLE ENERGY PROJECT.—The term "renewable energy project" means a project carried out on covered land that uses wind, solar, or geothermal energy to generate energy.

(8) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(9) VARIANCE AREA.—The term "variance area" means covered land that is—

(A) not an exclusion area;

(B) not a priority area; and

(C) identified by the Secretary as potentially available for renewable energy development and could be approved without a plan amendment, consistent with the principles of multiple use (as that term is defined in the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.)).

SEC. 4. LAND USE PLANNING; SUPPLEMENTS TO PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENTS.

(a) PRIORITY AREAS.—

(1) IN GENERAL.—The Secretary, in consultation with the Secretary of Energy, shall establish priority areas on covered land for geothermal, solar, and wind energy projects. Projects located in those priority areas shall be given the highest priority for review, and shall be offered the opportunity to participate in any regional mitigation plan developed for the relevant priority areas.

(2) DEADLINE.—

(A) GEOTHERMAL ENERGY.—For geothermal energy, the Secretary shall establish priority areas as soon as practicable, but not later than 5 years, after the date of the enactment of this Act.

(B) SOLAR ENERGY.—For solar energy, solar Designated Leasing Areas, including the solar energy zones established by the 2012 western solar plan of the Bureau of Land Management and any subsequent land use plan amendments, shall be considered to be priority areas for solar energy projects. The Secretary shall establish additional solar priority areas as soon as practicable, but not later than 3 years, after the date of the enactment of this Act.

(C) WIND ENERGY.—For wind energy, the Secretary shall establish additional wind priority areas as soon as practicable, but not later than 3 years, after the date of the enactment of this Act.

(b) VARIANCE AREAS.—To the maximum extent practicable, variance areas shall be considered for renewable energy project development, consistent with the principles of multiple use (as defined in the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.)).

(c) REVIEW AND MODIFICATION.—Not less than once every 5 years, the Secretary shall—

(1) review the adequacy of land allocations for geothermal, solar, and wind energy priority and variance areas for the purpose of encouraging new renewable energy development opportunities; and

(2) based on the review carried out under paragraph (1), add, modify, or eliminate priority, variance, and exclusion areas.

(d) COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT.—For purposes of this section, compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall be accomplished—

(1) for geothermal energy, by supplementing the October 2008 final programmatic environmental impact statement for geothermal leasing in the Western United States and incorporating any additional regional analyses that have been completed by Federal agencies since the programmatic environmental impact statement was finalized;

(2) for solar energy, by supplementing the July 2012 final programmatic environmental impact statement for solar energy development and incorporating any additional regional analyses that have been completed by Federal agencies since the programmatic environmental impact statement was finalized; and

(3) for wind energy, by supplementing the July 2005 final programmatic environmental impact statement for wind energy development and incorporating any additional regional analyses that have been completed by Federal agencies since the programmatic environmental impact statement was finalized.

(e) NO EFFECT ON PROCESSING APPLICATIONS.—Any requirements to prepare a supplement to a programmatic environmental impact statement under this section shall not result in any delay in processing a pending application for a renewable energy project.

(f) COORDINATION.—In developing a supplement required by this section, the Secretary shall coordinate, on an ongoing basis, with appropriate State, Tribal, and local governments, transmission infrastructure owners and operators, developers, and other appropriate entities to ensure that priority areas identified by the Secretary are—

(1) economically viable (including having access to existing and/or planned transmission lines);

(2) likely to avoid or minimize impacts to habitat for animals and plants, recreation, cultural resources, and other uses of covered land; and

(3) consistent with section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712), including subsection (c)(9) of that section (43 U.S.C. 1712(c)(9)).

SEC. 5. ENVIRONMENTAL REVIEW ON COVERED LAND.

(a) IN GENERAL.—If the Secretary determines that a proposed renewable energy project has been sufficiently analyzed by a programmatic environmental impact statement conducted under section 4(d), the Secretary shall not require any additional review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The Secretary shall publish any such project determinations on a publicly available website.

(b) ADDITIONAL ENVIRONMENTAL REVIEW.—If the Secretary determines that additional environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) is necessary for a proposed renewable energy project, the Secretary shall rely on the analysis in the programmatic environmental impact statement conducted under section 4(d), to the maximum extent practicable when analyzing the potential impacts of the project.

(c) RELATIONSHIP TO OTHER LAW.—Nothing in this section modifies or supersedes any requirement under applicable law.

SEC. 6. PROGRAM TO IMPROVE RENEWABLE ENERGY PROJECT PERMIT COORDINATION.

(a) ESTABLISHMENT.—The Secretary shall establish a national Renewable Energy Coordination Office and State, district, or field offices with responsibility to establish and implement a program to improve Federal permit coordination with respect to renewable energy projects on covered land and other activities deemed necessary by the Secretary. In carrying out the program, the Secretary may temporarily assign qualified staff to Renewable Energy Coordination Offices to expedite the permitting of renewable energy projects.

(b) MEMORANDUM OF UNDERSTANDING.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall enter into a memorandum of understanding for purposes of this section, including to specifically expedite the environmental analysis of applications for projects proposed in a variance area or a priority area, with the Secretary of Defense and the Secretary of Agriculture.

(2) STATE AND TRIBAL PARTICIPATION.—The Secretary may request the Governor of any interested State or any Tribal leader of any interested Indian Tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304)) to be a signatory to the memorandum of understanding under paragraph (1).

(c) DESIGNATION OF QUALIFIED STAFF.—

(1) IN GENERAL.—Not later than 30 days after the date on which the memorandum of understanding under subsection (b) is executed, all Federal signatories, as appropriate, shall identify for each of the Bureau of Land Management Renewable Energy Coordination Offices one or more employees who have expertise in the regulatory issues relating to the office in which the employee is employed, including, as applicable, particular expertise in—

(A) consultation regarding, and preparation of, biological opinions under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536);

(B) permits under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);

(C) regulatory matters under the Clean Air Act (42 U.S.C. 7401 et seq.);

(D) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.);

(E) the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.);

(F) the preparation of analyses under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(G) implementation of the requirements of section 306108 of title 54, United States Code (formerly known as section 106 of the National Historic Preservation Act);

(H) planning under section 14 of the National Forest Management Act of 1976 (16 U.S.C. 472a);

(I) the Bald and Golden Eagle Protection Act (16 U.S.C. 668–668d); and

(J) section 100101(a), chapter 1003, and sections 100751(a), 100752, 100753 and 102101 of title 54 , United States Code (previously known as the "National Park Service Organic Act").

(2) DUTIES.—Each employee assigned under paragraph (1) shall—

(A) be responsible for addressing all issues relating to the jurisdiction of the home office or agency of the employee; and

(B) participate as part of the team of personnel working on proposed energy projects, planning, monitoring, inspection, enforcement, and environmental analyses.

(d) ADDITIONAL PERSONNEL.—The Secretary may assign such additional personnel for the Bureau of Land Management Renewable Energy Coordination Offices as are necessary to ensure the effective implementation of any programs administered by the offices in accordance with the multiple use mandate of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

(e) CLARIFICATION OF EXISTING AUTHORITY.—Under section 307 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1737), the Bureau of Land Management may—

(1) accept donations for the purposes of public lands management; and

(2) accept donations from renewable energy companies working on public lands to help cover the costs of environmental reviews.

(f) REPORT TO CONGRESS.—

(1) IN GENERAL.—Not later than February 1 of the first fiscal year beginning after the date of the enactment of this Act, and each February 1 thereafter, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives a report describing the progress made under the program established under subsection (a) during the preceding year.

(2) INCLUSIONS.—Each report under this subsection shall include—

(A) projections for renewable energy production and capacity installations; and

(B) a description of any problems relating to leasing, permitting, siting, or production.

SEC. 7. INCREASING ECONOMIC CERTAINTY.

(a) CONSIDERATIONS.—The Secretary is authorized to and shall consider acreage rental rates, capacity fees, and other recurring annual fees in total when evaluating existing rates paid for the use of Federal land by renewable energy projects.

(b) INCREASES IN BASE RENTAL RATES.—Once a base rental rate is established upon the issuance of a right-of-way authorization, increases in the base rent shall be limited to the Implicit Price Deflator–Gross Domestic Product (IPD–GDP) index for the entire term of the right-of-way authorization.

(c) REDUCTIONS IN BASE RENTAL RATES.—The Secretary is authorized to reduce acreage rental rates and capacity fees, or both, for existing and new wind and solar authorizations if the Secretary determines—

(1) that the existing rates—

(A) exceed fair market value;

(B) impose economic hardships;

(C) limit commercial interest in a competitive lease sale or right-of-way grant; or

(D) are not competitively priced compared to other available land; or

(2) that a reduced rental rate or capacity fee is necessary to promote the greatest use of wind and solar energy resources, especially those resources inside priority areas. Rental rates and capacity fees for projects that are within the boundaries of a Designated Leasing Area but not formally recognized as being in such an area shall be equivalent to rents and fees for new leases inside of a Designated Leasing Area.

SEC. 8. LIMITED GRANDFATHERING.

(a) DEFINITION OF PROJECT.—In this section, the term "project" means a system described in section 2801.9(a)(4) of title 43, Code of Federal Regulations (as in effect on the date of enactment of this Act).

(b) REQUIREMENT TO PAY RENTS AND FEES.—Unless otherwise agreed to by the owner of a project, the owner of a project that applied for a right-of-way under section 501 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761) on or before December 19, 2016, shall be obligated to pay with respect to the right-of-way all rents and fees in effect before the effective date of the rule of the Bureau of Land Management entitled "Competitive Processes, Terms, and Conditions for Leasing Public Lands for Solar and Wind Energy Development and Technical Changes and Corrections" (81 Fed. Reg. 92122 (December 19, 2016)).

SEC. 9. RENEWABLE ENERGY GOAL.

The Secretary and the Secretary of Agriculture shall seek to issue permits that, in total, authorize production of not less than 25 gigawatts of electricity from wind, solar, and geothermal energy projects by not later than 2025, through management of public lands and administration of Federal laws.

SEC. 10. DISPOSITION OF REVENUES.

(a) DISPOSITION OF REVENUES.—Beginning on January 1, 2020, of the amounts collected as bonus bids, rentals, fees, or other payments under a right-of-way, permit, lease, or other authorization (other than under section 504(g) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1764(g))) for the development of wind or solar energy on covered land or National Forest System land, the following shall be made available without further appropriation or fiscal year limitation as follows:

(1) Twenty-five percent shall be paid by the Secretary of the Treasury to the State within the boundaries of which the revenue is derived.

(2) Twenty-five percent shall be paid by the Secretary of the Treasury to the one or more counties within the boundaries of which the revenue is derived, to be allocated among the counties based on the percentage of land from which the revenue is derived.

(3) Fifteen percent shall be deposited in the Treasury and be made available to the Secretary to carry out the program established under this Act, including the transfer of the funds by the Bureau of Land Management to other Federal agencies and State agencies to facilitate the processing of renewable energy permits on Federal land, with priority given to using the amounts, to the maximum extent practicable without detrimental impacts to emerging markets, to expediting the issuance of permits required for the development of renewable energy projects in the States from which the revenues are derived.

(4) Twenty-five percent shall be deposited in the Renewable Energy Resource Conservation Fund established by subsection (c).

(5) The remainder shall be deposited into the general fund of the Treasury for purposes of reducing the annual Federal budget deficit.

(b) PAYMENTS TO STATES AND COUNTIES.—

(1) IN GENERAL.—Amounts paid to States and counties under subsection (a) shall be used consistent with section 35 of the Mineral Leasing Act (30 U.S.C. 191).

(2) PAYMENTS IN LIEU OF TAXES.—A payment to a county under paragraph (1) shall be in addition to a payment in lieu of taxes received by the county under chapter 69 of title 31, United States Code.

(c) RENEWABLE ENERGY RESOURCE CONSERVATION FUND.—

(1) IN GENERAL.—There is established in the Treasury a fund to be known as the Renewable Energy Resource Conservation Fund, which shall be administered by the Secretary, in consultation with the Secretary of Agriculture.

(2) USE OF FUNDS.—The Secretary may make amounts in the Fund available to Federal, State, local, and Tribal agencies to be distributed in regions in which renewable energy projects are located on Federal land, for the purposes of—

(A) restoring and protecting—

(i) fish and wildlife habitat for affected species;
(ii) fish and wildlife corridors for affected species; and
(iii) wetlands, streams, rivers, and other natural water bodies in areas affected by wind, geothermal, or solar energy development; and

(B) preserving and improving recreational access to Federal land and water in an affected region through an easement, right-of-way, or other instrument from willing landowners for the purpose of enhancing public access to existing Federal land and water that is inaccessible or restricted.

(3) RESTRICTION ON USE OF FUNDS.—No funds made available under this subsection may be used for the purchase of real property unless in fulfillment of paragraph (2)(B).

(4) PARTNERSHIPS.—The Secretary may enter into cooperative agreements with State and Tribal agencies, nonprofit organizations, and other appropriate entities to carry out the activities described in subparagraphs (A) and (B) of paragraph (2).

(5) INVESTMENT OF FUND.—

(A) IN GENERAL.—Any amounts deposited in the Fund shall earn interest in an amount determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States of comparable maturities.

(B) USE.—Any interest earned under subparagraph (A) may be expended in accordance with this subsection.

(6) REPORT TO CONGRESS.—At the end of each fiscal year, the Secretary shall report to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate—

(A) the amount collected as described in subsection (a), by source, during that fiscal year;

(B) the amount and purpose of payments during that fiscal year to each Federal, State, local, and Tribal agency under paragraph (2); and

(C) the amount remaining in the Fund at the end of the fiscal year.

(7) INTENT OF CONGRESS.—It is the intent of Congress that the revenues deposited and used in the Fund shall supplement (and not supplant) annual appropriations for activities described in subparagraphs (A) and (B) of paragraph (2).

SEC. 11. PROMOTING AND ENHANCING DEVELOPMENT OF GEOTHERMAL ENERGY.

(a) IN GENERAL.—Section 234(a) of the Energy Policy Act of 2005 (42 U.S.C. 15873(a)) is amended by striking "in the first 5 fiscal years beginning after the date of enactment of this Act" and inserting "through fiscal year 2022".

(b) AUTHORIZATION.—Section 234(b) of the Energy Policy Act of 2005 (42 U.S.C. 15873(b)) is amended—

(1) by striking "Amounts" and inserting the following:

"(1) IN GENERAL.—Amounts"; and

(2) by adding at the end the following:

"(2) AUTHORIZATION.—Effective for fiscal year 2019 and each fiscal year thereafter, amounts deposited under subsection (a) shall be available to the Secretary of the Interior for expenditure, without further appropriation or fiscal year limitation, to implement the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.) and this Act.".

SEC. 12. FACILITATION OF COPRODUCTION OF GEOTHERMAL ENERGY ON OIL AND GAS LEASES.

Section 4(b) of the Geothermal Steam Act of 1970 (30 U.S.C. 1003(b)) is amended by adding at the end the following:

"(4) LAND SUBJECT TO OIL AND GAS LEASE.—Land under an oil and gas lease issued pursuant to the Mineral Leasing Act (30 U.S.C. 181 et seq.) or the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351 et seq.) that is subject to an approved application for permit to drill and from which oil and gas production is occurring may be available for noncompetitive leasing under subsection (c) by the holder of the oil and gas lease—

"(A) on a determination that geothermal energy will be produced from a well producing or capable of producing oil and gas; and

"(B) in order to provide for the coproduction of geothermal energy with oil and gas.".

SEC. 13. NONCOMPETITIVE LEASING OF ADJOINING AREAS FOR DEVELOPMENT OF GEOTHERMAL RESOURCES.

Section 4(b) of the Geothermal Steam Act of 1970 (30 U.S.C. 1003(b)) is further amended by adding at the end the following:

"(5) ADJOINING LAND.—

"(A) DEFINITIONS.—In this paragraph:

"(i) FAIR MARKET VALUE PER ACRE.—The term 'fair market value per acre' means a dollar amount per acre that—

"(I) except as provided in this clause, shall be equal to the market value per acre (taking into account the determination under subparagraph (B)(iii) regarding a valid discovery on the adjoining land) as determined by the Secretary under regulations issued under this paragraph;

"(II) shall be determined by the Secretary with respect to a lease under this paragraph, by not later than the end of the 180-day period beginning on the date the Secretary receives an application for the lease; and

"(III) shall be not less than the greater of—

"(aa) 4 times the median amount paid per acre for all land leased under this Act during the preceding year; or

"(bb) $50.

"(ii) INDUSTRY STANDARDS.—The term 'industry standards' means the standards by which a qualified geothermal professional assesses whether downhole or flowing temperature measurements with indications of permeability are sufficient to produce energy from geothermal resources, as determined through flow or injection testing or measurement of lost circulation while drilling.

"(iii) QUALIFIED FEDERAL LAND.—The term 'qualified Federal land' means land that is otherwise available for leasing under this Act.

"(iv) QUALIFIED GEOTHERMAL PROFESSIONAL.—The term 'qualified geothermal professional' means an individual who is an engineer or geoscientist in good professional standing with at least 5 years of experience in geothermal exploration, development, or project assessment.

"(v) QUALIFIED LESSEE.—The term 'qualified lessee' means a person who may hold a geothermal lease under this Act (including applicable regulations).

"(vi) VALID DISCOVERY.—The term 'valid discovery' means a discovery of a geothermal resource by a new or existing slim hole or production well, that exhibits downhole or flowing temperature measurements with indications of permeability that are sufficient to meet industry standards.

"(B) AUTHORITY.—An area of qualified Federal land that adjoins other land for which a qualified lessee holds a legal right to develop geothermal resources may be available for a noncompetitive lease under this section to the qualified lessee at the fair market value per acre, if—

"(i) the area of qualified Federal land—

"(I) consists of not less than 1 acre and not more than 640 acres; and

"(II) is not already leased under this Act or nominated to be leased under subsection (a);

"(ii) the qualified lessee has not previously received a noncompetitive lease under this paragraph in connection with the valid discovery for which data has been submitted under clause (iii)(I); and

"(iii) sufficient geological and other technical data prepared by a qualified geothermal professional has been submitted by the qualified lessee to the applicable Federal land management agency that would lead individuals who are experienced in the subject matter to believe that—

"(I) there is a valid discovery of geothermal resources on the land for which the qualified lessee holds the legal right to develop geothermal resources; and

"(II) that geothermal feature extends into the adjoining areas.

"(C) DETERMINATION OF FAIR MARKET VALUE.—

"(i) IN GENERAL.—The Secretary shall—

"(I) publish a notice of any request to lease land under this paragraph;

"(II) determine fair market value for purposes of this paragraph in accordance with procedures for making those determinations that are established by regulations issued by the Secretary;

"(III) provide to a qualified lessee and publish, with an opportunity for public comment for a period of 30 days, any proposed determination under this subparagraph of the fair market value of an area that the qualified lessee seeks to lease under this paragraph; and

"(IV) provide to the qualified lessee and any adversely affected party the opportunity to appeal the final determination of fair market value in an administrative proceeding before the applicable Federal land management agency, in accordance with applicable law (including regulations).

"(ii) LIMITATION ON NOMINATION.—After publication of a notice of request to lease land under this paragraph, the Secretary may not accept under subsection (a) any nomination of the land for leasing unless the request has been denied or withdrawn.

"(iii) ANNUAL RENTAL.—For purposes of section 5(a)(3), a lease awarded under this paragraph shall be considered a lease awarded in a competitive lease sale.

"(D) REGULATIONS.—Not later than 270 days after the date of the enactment of this paragraph, the Secretary shall issue regulations to carry out this paragraph.".

SEC. 14. SAVINGS CLAUSE.

Notwithstanding any other provision of this Act, the Secretary shall continue to manage public lands under the principles of multiple use and sustained yield in accordance with title I of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), including due consideration of mineral and nonrenewable energy-related projects and other nonrenewable energy uses, for the purposes of land use planning, permit processing, and conducting environmental reviews.

PURPOSE OF THE BILL

The purpose of H.R. 3794 is to promote the development of renewable energy on public lands.

BACKGROUND AND NEED FOR LEGISLATION

The urgent need to address climate change demands a rapid transition away from fossil fuels and toward a clean-energy economy. Renewable energy resources on public lands and waters can and must play a leading role in driving this energy transition.

Thanks to decades of innovation, steeply declining costs, and smart policies at both the federal and state levels, the amount of electricity generated by wind and solar in the United States has increased tremendously. The United States currently generates approximately 18 percent of its electricity from renewable energy resources—two times more than a decade ago.[1] When President Obama took office, there were no solar plants on public lands. By the time he left, thirty-six projects had been approved. Including new wind and geothermal, the Obama administration approved enough new renewable energy to power more than five million homes. But despite the strong growth of renewable energy nationally and millions of acres still open for development, construction of wind, solar, and geothermal projects on public lands has stalled in recent years. At the time of H.R. 3794's consideration by the Committee, the Trump administration had approved only two new solar projects, one wind project, and zero new geothermal plants on public lands. H.R. 3794 makes bipartisan reforms to promote renewable energy projects on public lands that benefit local communities while preserving access to recreation opportunities and protecting wildlife habitat.

H.R. 3794 addresses concerns about the renewable energy permitting process by codifying a "smart from the start" approach to renewable energy development. Until 2017, the process for approving wind and solar projects on public lands generally involved the

[1] *2019 Sustainable Energy in American Factbook*. Business Council for Sustainable Energy and Bloomberg New Energy Finance. https://www.bcse.org/factbook/#.

Bureau of Land Management (BLM) reviewing right-of-way applications from developers on a first-come, first-serve basis. This system didn't do enough to ensure a fair return to taxpayers and proved inefficient for construction of large-scale infrastructure projects like wind and solar projects, while allowing speculators to delay review of more promising projects. To address these problems, the Obama administration implemented an approach it dubbed "smart from the start" that encouraged development in prescreened areas that have fewer conflicts with other activities on public lands. The value of that approach was demonstrated in 2014, when BLM held its first successful auction for a pre-screened region, the Dry Lake Solar Energy Zone in Clark County, Nevada. The auction brought in $5.8 million in winning bids to the U.S. Treasury, and three projects inside the zone were reviewed and approved in less than ten months, less than half the time of a typical project.[2]

Under this legislation, the Department of the Interior (DOI) will continue this "smart from the start" approach by designating and periodically updating priority areas for wind, solar, and geothermal energy on public lands. These priority areas minimize both environmental impacts and conflicts with other uses of public lands such as recreation, conservation, and preservation of wildlife habitat, while maximizing the economic potential for developers by, for example, being close to existing or planned transmission infrastructure. Projects proposed inside these priority areas will pay lower fees and receive expedited permitting thanks to advanced preliminary environmental review under the National Environmental Policy Act (NEPA). Developers will not be prohibited from proposing renewable energy projects outside of priority areas, but the legislation is designed to encourage focused development in the priority areas. By implementing this "smart from the start" approach, the Committee is confident that development of much-needed renewable energy projects can successfully move forward while the many other values provided by public lands to the American people are protected.

The legislation makes several other changes to improve permitting of projects on public lands, including requiring DOI to permanently establish a Renewable Energy Coordination Office that was first established by the Obama administration but eliminated in early 2017. This office will reduce conflicts between agencies within the Interior Department by providing a bird's-eye view over all renewable energy development on public lands, ensuring that permitting and interagency coordination is happening in a timely manner, and making sure that the Department is working toward the goal of permitting a total of 25 GW of wind, solar, and geothermal on public lands by 2025. The bill also clarifies that DOI has the authority to accept voluntary payments from clean energy companies to fund environmental reviews, a common practice for the oil and gas industry that is not widely used for renewables. These payments are not to dictate a preferred outcome, but instead help alleviate DOI resource constraints, provide regulatory certainty, and allow for timely, comprehensive environmental reviews. These pay-

[2] "Interior Department Approves First Solar Energy Zone Projects." *U.S. Department of the Interior*, 1 June 2015. https://www.doi.gov/pressreleases/interior-department-approves-first-solar-energy-zone-projects.

ments are not a substitute for regular appropriations from Congress, which has the ultimate responsibility to ensuring that the Department has the proper resources for all permitting activities.

A concern heard by the Committee when developing this legislation was the continued high cost of development. In January 2017, BLM implemented the Wind and Solar Leasing Rule, which transitioned wind and solar development in part to a competitive bidding system and set up a new process for determining rents and capacity fees. The Committee supports the continued use of competitive lease sales, rental payments, and capacity payments to determine fair market value for American taxpayers, but acknowledges that the industry finds that high costs are making public lands less competitive with private lands.[3] These concerns about cost are reflected in the dearth of new project proposals submitted to BLM; companies do not appear to be actively pursuing new projects on public lands. At the time of the Committee's markup of H.R. 3794 in November 2019, BLM had yet to approve any renewable energy projects that had been proposed after 2016.

The slowdown of renewable energy development on public lands is an unacceptable trend if we are to seriously address the climate crisis and transition our nation to a clean-energy economy. H.R. 3794 gives the Secretary of the Interior more discretion and flexibility to set fair, predictable rent and fee schedules for developers while still ensuring that the Department receives fair value for American taxpayers. Language is included in the legislation to level the playing field across industries and provide royalty relief options for renewable energy that already exist for oil, gas, and coal production on public lands. The bill also provides limited grandfathering to renewable energy projects impacted by unexpected rate increases under the Wind and Solar Leasing Rule. It was brought to the Committee's attention, for example, that one wind project's rental payments increased by more than 300 percent as a result of the rule and another expects to see over $100 million in additional costs. Such significant cost increases were not factored into the original business plans and therefore not incorporated into contracts signed with utility companies. Limited grandfathering allows these projects to remain economically viable, ensuring that federal taxpayers and local communities will receive their promised benefits.

Another disparity between fossil fuel and wind and solar development on public lands is the distribution of revenues. For oil, gas, coal, and other leasable minerals, states receive roughly half of all bonus bids, rents, and royalties, creating local support for, and even dependency on, such development for budgetary reasons alone. Wind and solar revenues, in contrast, flow exclusively to the federal government. By diverting some of these revenues to states and counties, H.R. 3794 promises to create additional local support for renewable energy projects while also providing a source of funds that could allow some states and localities to reduce their dependence on fossil fuel derived income, potentially further accelerating the transition to a clean energy economy.

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[3] Testimony by Abigail Ross Hopper of the Solar Energy Industries Association. Subcommittee on Energy and Mineral Resources, July 25, 2019. https://naturalresources.house.gov/imo/media/doc/1.%20Testimony%20-%20Abigail%20Ross%20Hopper%20-%20EMR%20Leg%20Hrg%2007.25.19.pdf.

Just like any other use of public lands, renewable energy projects must be held to high standards for mitigating environmental impacts and minimizing conflicts with other uses of public lands. The existing NEPA and land-use planning processes are designed to address this on a project-by-project basis, but H.R. 3794 aims for a broader positive impact by directing 25 percent of wind and solar energy revenues to a newly established Renewable Energy Resource Conservation Fund, which will make funds available to federal, state, and tribal agencies for projects that restore and protect wildlife habitat and improve recreation access on public lands.

Focusing on the energy of the past and ignoring the impacts of climate change is not a formula for a healthy or sustainable future. Instead, it will simply marginalize us internationally and handicap us economically. H.R. 3794 is designed to strike the appropriate balance between responsible renewable energy development and conservation while also benefitting local communities and federal taxpayers.

COMMITTEE ACTION

H.R. 3794 was introduced on July 17, 2019, by Representative Paul Gosar (R–AZ). The bill was referred to the Committee on Natural Resources, and in addition to the Committee on Agriculture. Within the Natural Resources Committee, the bill was referred to the Subcommittee on Energy and Mineral Resources. On July 25, 2019, the Subcommittee held a hearing on the bill. On November 20, 2019, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. Representative Mike Levin (D–CA) offered an amendment designated Levin #033. The amendment was agreed to by voice vote. No additional amendments were offered, and the bill, as amended, was adopted and ordered favorably reported to the House of Representatives by voice vote.

On July 1, 2020, the House of Representatives passed H.R. 2, the Moving Forward Act, which included a version of the text of H.R. 3794.[4]

HEARINGS

For the purposes of section 103(i) of H. Res. 6 of the 116th Congress—the following hearing was used to develop or consider H.R. 3794: legislative hearing by the Subcommittee on Energy and Mineral Resources held on July 25, 2019.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section provides the short title of the bill, the "Public Land Renewable Energy Development Act of 2019".

Section 2. Table of contents

This section provides the table of contents of the legislation.

[4] H.R. 2, 116th Cong. (as passed by and engrossed in the House, July 1, 2020).

Section 3. Definitions

This section defines key terms in the bill. Definitions in this section make clear that renewable energy development continues to be prohibited inside national parks, wilderness areas, and other federally protected public lands where energy development is prohibited under existing federal law.

Section 4. Land use planning; supplements to programmatic environmental impact statements

This section directs the Secretary of the Interior, in consultation with the Secretary of Energy, to designate, periodically review, and encourage development inside pre-screened priority areas for wind, solar, and geothermal energy. Projects inside designated leasing areas will receive faster permit approvals, pay lower fees, and received highest priority for review by the Bureau of Land Management. Land classifications will be reviewed at least once every five years, with modifications made if necessary. Solar priority areas established in 2012 shall be reviewed within three years of enactment. This section also directs DOI to coordinate with states, tribes, local governments, transmission owners and operators, developers, and other appropriate entities when establishing priority areas. This section also clarifies that, in accordance with current law, renewable energy permitting activities can proceed under the current wind and solar programmatic environmental impact statements (PEIS) with any required additional environmental review while a supplement to a PEIS is being prepared.

Section 5. Environmental review on covered land

This section states that a renewable energy project will not need to undergo further environmental review if the Secretary determines that it has been sufficiently analyzed by a programmatic environmental impact statement. The Secretary shall publish any such determinations on a publicly available website as soon as possible. When additional review is required, the Secretary shall rely on analysis from existing programmatic environmental impact statements as much as possible.

Section 6. Program to improve renewable energy project permit coordination

This section outlines steps that the Secretary of the Interior shall take to improve renewable energy permitting programs. The Secretary shall establish a national Renewable Energy Coordination Office and affiliated state and field offices across the country where such expertise would be most valuable. The Secretary is directed to sign a Memorandum of Understanding (MOU) with the Secretary of Defense and the Secretary of Agriculture for the purposes of improving renewable energy permit reviews; governors and tribal leaders may also be invited to join this MOU. All federal agencies that sign the MOU must identify staff with expertise on regulatory issues relevant to renewable energy project reviews. The section also clarifies that BLM is authorized to accept donations from renewable energy developers for environmental reviews, authority that is routinely used by the oil and gas industry but not by the renewable energy industry. The Secretary of the Interior shall submit an annual report to Congress that includes information on

projects operating on public lands and summaries of any problems that arise throughout the leasing, permitting, and production processes.

Section 7. Increasing economic certainty

This section gives the Secretary authority to reduce wind and solar rental rates and capacity fees if there is a demonstrated economic need. This authority is modeled after existing authorities already provided in statute for the coal, oil, and gas industries. The Secretary shall limit increases in base rental rates to the Implicit Price Deflator-Gross Domestic Product for the entire life of a right-of-way authorization. This section also allows the Secretary to reduce fees paid by solar projects affected by the 2012 Western Solar Plan. It is the Committee's understanding that a number of existing solar projects found themselves inside Designated Leasing Areas under the Western Solar Plan but are paying fees as if they were located outside of such priority areas.

Section 8. Limited grandfathering

This section provides limited grandfathering to certain wind and solar energy projects that had already applied for a right-of-way before implementation of the Wind and Solar Leasing Rule. This section is intended to address unexpected changes to the fee structure for projects that had already begun the permit application process before implementation of the Wind and Solar Leasing Rule. This section is not intended to limit BLM's ability to periodically review and increase rental rates and fees over time. Project owners can choose to opt-in or opt-out of this limited grandfathering.

Section 9. Renewable energy goal

This section establishes a goal of permitting 25 gigawatts of renewable energy on public lands by 2025. This goal is cumulative and shall include all previously permitted projects on lands managed by the Department of the Interior and the Department of Agriculture at the date of enactment. The Secretary may not count any permitted offshore wind projects toward this goal.

Section 10. Disposition of revenues

This section establishes the distribution of revenues from wind and solar energy projects: 25 percent to states, 25 percent to counties, 25 percent to a new Renewable Energy Resource Conservation Fund, 15 percent to BLM to assist with renewable energy permitting, and 10 percent to the Treasury for deficit reduction. Money in the new fund will be distributed by the Secretary of the Interior to federal, state, local, and tribal agencies for projects protecting and restoring fish and wildlife habitat, or to ensure and improve access for hunting, fishing, and other outdoor recreational activities.

Section 11. Promoting and enhancing development of geothermal energy

This section reauthorizes the Geothermal Steam Act, the statute that governs geothermal energy production on public lands.

Section 12. Facilitation of coproduction of geothermal energy on oil and gas leases

This section allows holders of oil and gas leases to obtain non-competitive geothermal leases under the Geothermal Steam Act to allow for the co-production of geothermal energy from an oil and gas well.

Section 13. Noncompetitive leasing of adjoining areas for development of geothermal resources

This section allows the Secretary of the Interior to award non-competitive leases for geothermal energy production on adjoining areas of an existing lease under specific conditions. Non-competitive leases awarded in this manner will be required to pay a fee determined by the Secretary of the Interior based on fair market value with a determination subject to public comment and appeal.

Section 14. Savings clause

This section states that nothing in the bill shall change the Secretary's responsibility to manage public lands under the principles of multiple use and sustained yield in accordance with the Federal Land Policy and Management Act (FLPMA).

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. *Cost of Legislation and the Congressional Budget Act*. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 4, 2020.

Hon. RAÚL M. GRIJALVA,
Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3794, the Public Land Renewable Energy Development Act of 2019.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Janani Shankaran.

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

At a Glance

H.R. 3794, Public Land Renewable Energy Development Act of 2019

As ordered reported by the House Committee on Natural Resources on November 20, 2019

By Fiscal Year, Millions of Dollars	2020	2020-2025	2020-2030
Direct Spending (Outlays)	12	157	307
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	12	157	307
Spending Subject to Appropriation (Outlays)	*	5	not estimated

Statutory pay-as-you-go procedures apply?	Yes	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2031?	< $5 billion	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

* = between zero and $500,000.

The bill would

- Authorize the Bureau of Land Management (BLM) to spend income from renewable-energy projects located on federal land without further appropriation
- Reduce the rates charged for certain wind and solar energy projects located on federal land
- Direct BLM to establish priority areas on federal land for renewable-energy projects

Estimated budgetary effects would primarily stem from

- Spending of income from renewable-energy projects
- Forgone government income resulting from reduced rates

Bill summary: H.R. 3794 would authorize the Bureau of Land Management (BLM) to spend income received from renewable-energy projects located on federal land without further appropriation. The bill also would reduce the rates charged for certain wind and solar energy projects located on federal land, and would direct the BLM to establish priority areas on federal land for renewable energy projects.

Estimated Federal cost: The estimated budgetary effect of H.R. 3794 is shown in Table 1. The costs of the legislation fall within budget functions 300 (natural resources and environment) and 800 (general government).

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF H.R. 3794

	By fiscal year, millions of dollars—						
	2020	2021	2022	2023	2024	2025	2020–2025
Increases in Direct Spending							
Estimated Budget Authority	27	30	31	27	28	29	172
Estimated Outlays	12	25	29	30	32	29	157
Increases in Spending Subject to Appropriation							
Estimated Authorization	*	1	1	1	1	1	5
Estimated Outlays	*	1	1	1	1	1	5

* = between zero and $500,000.

Basis of estimate: For this estimate, CBO assumes that the legislation will be enacted in 2020 and that the necessary amounts will be provided in each year. Estimated outlays are based on historical spending patterns for similar activities.

Background: Under current law, businesses that seek to develop wind and solar energy projects on federal land apply to BLM for a right-of-way grant. After obtaining a grant, businesses pay the federal government annual rent based on land values and a megawatt capacity fee. (If multiple businesses are interested in the same parcel, BLM may issue a right-of-way grant to the highest bidder.) Those payments, which totaled $28 million in 2019, are classified in the budget as offsetting receipts, which are recorded as reductions in direct spending. CBO projects that under current law, the government will collect $341 million in receipts from wind and solar energy projects over the 2020–2030 period. Spending of those receipts is subject to appropriation.

BLM also administers geothermal leasing on federal land. For all executed leases, lessees pay the federal government a bonus bid (the amount that a business is willing to pay for the right to extract geothermal resources), annual rent to retain the lease, and royalties based on the value of any geothermal resources produced. Those payments, which totaled $16 million in 2019, are recorded in the budget as offsetting receipts. CBO projects that the government will collect gross receipts of $176 million from geothermal leasing over the 2020–2030 period. Under current law, states and counties receive 75 percent of those amounts; thus, net federal receipts will total $44 million over that same period.

Direct spending: CBO estimates that enacting H.R. 3794 would increase direct spending by $307 million over the 2020–2030 period (see Table 2).

TABLE 2.—INCREASES IN DIRECT SPENDING UNDER H.R. 3794

	By fiscal year, millions of dollars—												
	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2020–2025	2020–2030
Rate Reductions for Certain Wind and Solar Projects:													
Estimated Budget Authority	2	6	6	6	6	6	6	6	6	6	6	32	62
Estimated Outlays	2	6	6	6	6	6	6	6	6	6	6	32	62
Spending of Wind and Solar Proceeds:													
Estimated Budget Authority	17	20	21	21	22	23	23	24	24	25	25	124	245
Estimated Outlays	10	16	19	20	22	22	23	23	24	25	25	109	229
Spending of Geothermal Proceeds:													
Estimated Budget Authority	8	4	4	0	0	0	0	0	0	0	0	16	16
Estimated Outlays	*	3	4	4	4	1	0	0	0	0	0	16	16
Total Changes:													
Estimated Budget Authority	27	30	31	27	28	29	29	30	30	31	31	172	323
Estimated Outlays	12	25	29	30	32	29	29	29	30	31	31	157	307

* = between zero and $500,000.

Rate reductions for certain wind and solar projects: In December 2016, BLM issued a rule that increased rents and megawatt capacity fees for wind and solar energy projects on federal land. Operators that submitted right-of-way applications or already had projects before BLM issued the rule began to pay new rates in 2018. Section 8 would allow those operators to pay the rates in ef-

fect before the rule. Using information from BLM, CBO estimates that enacting the section would reduce offsetting receipts by $6 million annually and by $62 million over the 2020–2030 period.

Spending of wind and solar proceeds: Effective January 1, 2020, section 10 would make 90 percent of bonus bids, rents, and capacity fees from wind and solar energy projects available to spend without further appropriation. CBO estimates that under the bill, the government would collect, on average, $25 million annually in receipts over the 2020–2030 period. Fifty percent of receipts would be paid to states and counties where those projects are located; 25 percent would be deposited into a conservation fund for restoration activities; and 15 percent would be available for processing permits. CBO assumes that payments to states and counties would be made in the same year that the receipts are collected.

H.R. 3794 would authorize the Department of the Treasury to pay interest on any balances in the conservation fund that are not needed for current expenditures; those amounts also would be available to spend without further appropriation. CBO estimates that enacting section 10 would increase direct spending by $229 million over the 2020–2030 period; about $2 million of that amount would stem from interest credited to the conservation fund.

Spending of geothermal proceeds: Section 11 would authorize BLM to spend, without further appropriation, 25 percent of gross receipts collected from geothermal leasing over the 2019–2022 period. Those amounts would be available for administering the program. CBO estimates that enacting the section would increase direct spending by $16 million over the 2020–2030 period.

Other provisions: Section 12 would allow an operator with a federal oil and gas lease to noncompetitively acquire the rights to coproduce geothermal resources under that lease. Section 13 of the bill would permit an operator with a federal geothermal lease to noncompetitively lease land adjoining that lease. CBO expects that allowing businesses to acquire such rights noncompetitively would reduce bonus bids as some businesses would now acquire leases without bidding for them. However, the bill also could increase royalties from geothermal leasing if businesses obtain noncompetitive leases on the land they would not otherwise bid on. Using information from BLM, CBO expects that enacting this provision would affect few leases and that the net effect on direct spending would be negligible.

Spending subject to appropriation: Section 4 would direct BLM to establish priority areas on federal land for solar, wind, and geothermal energy projects. Based on the costs of similar tasks, CBO estimates that implementing the provision would cost less than $500,000 in 2020 and about $1 million annually over the 2021–2025 period. That amount reflects six additional employees at an average annual cost of $150,000 each.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in Table 3.

TABLE 3.—CBO'S ESTIMATE OF THE STATUTORY PAY-AS-YOU-GO EFFECTS OF H.R. 3794, THE PUBLIC LAND RENEWABLE ENERGY DEVELOPMENT ACT OF 2019, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON NATURAL RESOURCES ON NOVEMBER 20, 2019

	By fiscal year, millions of dollars—												
	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2020–2025	2020–2030
Net Increase in the Deficit													
Pay-As-You-Go Effect	12	25	29	30	32	29	29	29	30	31	31	157	307

Increase in long-term deficits: CBO estimates that enacting H.R. 3794 would not increase on-budget deficits by more than $5 billion in any of the four consecutive 10-year periods beginning in 2031.

Mandates: None.

Estimate prepared by: Federal Costs: Janani Shankaran; Mandates: Lilia Ledezma.

Estimate reviewed by: Kim P. Cawley, Chief, Natural and Physical Resources Cost Estimates Unit; H. Samuel Papenfuss, Deputy Director of Budget Analysis.

2. *General Performance Goals and Objectives.* As required by clause 3(c)(4) of rule XIII, the general performance goals and objectives of this bill are to promote the development of renewable energy on public lands.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

UNFUNDED MANDATES REFORM ACT STATEMENT

This bill contains no unfunded mandates.

EXISTING PROGRAMS

This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139. The Renewable Energy Resource Conservation Fund established by this bill at section 10(c) is related and complementary to, but not duplicative of, the following programs identified in the most recent Catalog of Federal Domestic Assistance published pursuant to 31 U.S.C. § 6104: Watershed Restoration and Enhancement Agreement Authority (CFDA No. 10.693), Plant Conservation and Restoration Management (CFDA No. 15.245), Fish and Wildlife Coordination Act (CFDA No. 15.517), Recreation Resources Management (CFDA No. 15.524), Sport Fish Restoration (CFDA No. 15.605), Wildlife Restoration and Basic Hunter Education (CFDA No. 15.611), Coastal Wetlands Planning, Protection and Restoration (CFDA No. 15.614), and North American Wetlands Conservation Fund (CFDA No. 15.623).

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

PREEMPTION OF STATE, LOCAL, OR TRIBAL LAW

Any preemptive effect of this bill over state, local, or tribal law is intended to be consistent with the bill's purposes and text and the Supremacy Clause of Article VI of the U.S. Constitution.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

ENERGY POLICY ACT OF 2005

* * * * * * *

TITLE II—RENEWABLE ENERGY

* * * * * * *

Subtitle B—Geothermal Energy

* * * * * * *

SEC. 234. DEPOSIT AND USE OF GEOTHERMAL LEASE REVENUES FOR 5 FISCAL YEARS.

(a) DEPOSIT OF GEOTHERMAL RESOURCES LEASES.—Notwithstanding any other provision of law, amounts received by the United States [in the first 5 fiscal years beginning after the date of enactment of this Act] *through fiscal year 2022* as rentals, royalties, and other payments required under leases under the Geothermal Steam Act of 1970, excluding funds required to be paid to State and county governments, shall be deposited into a separate account in the Treasury.

(b) USE OF DEPOSITS.—[Amounts]

(1) IN GENERAL.—Amounts deposited under subsection (a) shall be available to the Secretary of the Interior for expenditure, without further appropriation and without fiscal year limitation, to implement the Geothermal Steam Act of 1970 and this Act.

(2) AUTHORIZATION.—Effective for fiscal year 2019 and each fiscal year thereafter, amounts deposited under subsection (a) shall be available to the Secretary of the Interior for expenditure, without further appropriation or fiscal year limitation, to implement the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.) and this Act.

(c) TRANSFER OF FUNDS.—For the purposes of coordination and processing of geothermal leases and geothermal use authorizations on Federal land the Secretary of the Interior may authorize the expenditure or transfer of such funds as are necessary to the Forest Service.

* * * * * * *

GEOTHERMAL STEAM ACT OF 1970

* * * * * * *

SEC. 4. LEASING PROCEDURES.

(a) NOMINATIONS.—The Secretary shall accept nominations of land to be leased at any time from qualified companies and individuals under this Act.

(b) COMPETITIVE LEASE SALE REQUIRED.—

(1) IN GENERAL.—Except as otherwise specifically provided by this Act, all land to be leased that is not subject to leasing under subsection (c) shall be leased as provided in this subsection to the highest responsible qualified bidder, as determined by the Secretary.

(2) COMPETITIVE LEASE SALES.—The Secretary shall hold a competitive lease sale at least once every 2 years for land in a State that has nominations pending under subsection (a) if the land is otherwise available for leasing.

(3) LANDS SUBJECT TO MINING CLAIMS.—Lands that are subject to a mining claim for which a plan of operations has been approved by the relevant Federal land management agency may be available for noncompetitive leasing under this section to the mining claim holder.

(4) LAND SUBJECT TO OIL AND GAS LEASE.—Land under an oil and gas lease issued pursuant to the Mineral Leasing Act (30 U.S.C. 181 et seq.) or the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351 et seq.) that is subject to an approved application for permit to drill and from which oil and gas production is occurring may be available for noncompetitive leasing under subsection (c) by the holder of the oil and gas lease—

(A) on a determination that geothermal energy will be produced from a well producing or capable of producing oil and gas; and

(B) in order to provide for the coproduction of geothermal energy with oil and gas.

(5) ADJOINING LAND.—

(A) DEFINITIONS.—In this paragraph:

(i) FAIR MARKET VALUE PER ACRE.—The term "fair market value per acre" means a dollar amount per acre that—

(I) except as provided in this clause, shall be equal to the market value per acre (taking into account the determination under subparagraph (B)(iii) regarding a valid discovery on the adjoining land) as determined by the Secretary under regulations issued under this paragraph;

(II) shall be determined by the Secretary with respect to a lease under this paragraph, by not later

than the end of the 180-day period beginning on the date the Secretary receives an application for the lease; and

(III) shall be not less than the greater of—

(aa) 4 times the median amount paid per acre for all land leased under this Act during the preceding year; or

(bb) $50.

(ii) INDUSTRY STANDARDS.—The term "industry standards" means the standards by which a qualified geothermal professional assesses whether downhole or flowing temperature measurements with indications of permeability are sufficient to produce energy from geothermal resources, as determined through flow or injection testing or measurement of lost circulation while drilling.

(iii) QUALIFIED FEDERAL LAND.—The term "qualified Federal land" means land that is otherwise available for leasing under this Act.

(iv) QUALIFIED GEOTHERMAL PROFESSIONAL.—The term "qualified geothermal professional" means an individual who is an engineer or geoscientist in good professional standing with at least 5 years of experience in geothermal exploration, development, or project assessment.

(v) QUALIFIED LESSEE.—The term "qualified lessee" means a person who may hold a geothermal lease under this Act (including applicable regulations).

(vi) VALID DISCOVERY.—The term "valid discovery" means a discovery of a geothermal resource by a new or existing slim hole or production well, that exhibits downhole or flowing temperature measurements with indications of permeability that are sufficient to meet industry standards.

(B) AUTHORITY.—An area of qualified Federal land that adjoins other land for which a qualified lessee holds a legal right to develop geothermal resources may be available for a noncompetitive lease under this section to the qualified lessee at the fair market value per acre, if—

(i) the area of qualified Federal land—

(I) consists of not less than 1 acre and not more than 640 acres; and

(II) is not already leased under this Act or nominated to be leased under subsection (a);

(ii) the qualified lessee has not previously received a noncompetitive lease under this paragraph in connection with the valid discovery for which data has been submitted under clause (iii)(I); and

(iii) sufficient geological and other technical data prepared by a qualified geothermal professional has been submitted by the qualified lessee to the applicable Federal land management agency that would lead individuals who are experienced in the subject matter to believe that—

(I) there is a valid discovery of geothermal resources on the land for which the qualified lessee holds the legal right to develop geothermal resources; and

(II) that geothermal feature extends into the adjoining areas.

(C) DETERMINATION OF FAIR MARKET VALUE.—

(i) IN GENERAL.—The Secretary shall—

(I) publish a notice of any request to lease land under this paragraph;

(II) determine fair market value for purposes of this paragraph in accordance with procedures for making those determinations that are established by regulations issued by the Secretary;

(III) provide to a qualified lessee and publish, with an opportunity for public comment for a period of 30 days, any proposed determination under this subparagraph of the fair market value of an area that the qualified lessee seeks to lease under this paragraph; and

(IV) provide to the qualified lessee and any adversely affected party the opportunity to appeal the final determination of fair market value in an administrative proceeding before the applicable Federal land management agency, in accordance with applicable law (including regulations).

(ii) LIMITATION ON NOMINATION.—After publication of a notice of request to lease land under this paragraph, the Secretary may not accept under subsection (a) any nomination of the land for leasing unless the request has been denied or withdrawn.

(iii) ANNUAL RENTAL.—For purposes of section 5(a)(3), a lease awarded under this paragraph shall be considered a lease awarded in a competitive lease sale.

(D) REGULATIONS.—Not later than 270 days after the date of the enactment of this paragraph, the Secretary shall issue regulations to carry out this paragraph.

(c) NONCOMPETITIVE LEASING.—The Secretary shall make available for a period of 2 years for noncompetitive leasing any tract for which a competitive lease sale is held, but for which the Secretary does not receive any bids in a competitive lease sale.

(d) PENDING LEASE APPLICATIONS.—

(1) IN GENERAL.—It shall be a priority for the Secretary, and for the Secretary of Agriculture with respect to National Forest Systems land, to ensure timely completion of administrative actions, including amendments to applicable forest plans and resource management plans, necessary to process applications for geothermal leasing pending on the date of enactment of this subsection. All future forest plans and resource management plans for areas with high geothermal resource potential shall consider geothermal leasing and development.

(2) ADMINISTRATION.—An application described in paragraph (1) and any lease issued pursuant to the application—

(A) except as provided in subparagraph (B), shall be subject to this section as in effect on the day before the date of enactment of this paragraph; or

(B) at the election of the applicant, shall be subject to this section as in effect on the effective date of this paragraph.

(e) LEASES SOLD AS A BLOCK.—If information is available to the Secretary indicating a geothermal resource that could be produced as 1 unit can reasonably be expected to underlie more than 1 parcel to be offered in a competitive lease sale, the parcels for such a resource may be offered for bidding as a block in the competitive lease sale.

(f) LEASING FOR DIRECT USE OF GEOTHERMAL RESOURCES.—Notwithstanding subsection (b), the Secretary may identify areas in which the land to be leased under this Act exclusively for direct use of geothermal resources, without sale for purposes other than commercial generation of electricity, may be leased to any qualified applicant that first applies for such a lease under regulations issued by the Secretary, if the Secretary—

(1) publishes a notice of the land proposed for leasing not later than 90 days before the date of the issuance of the lease;

(2) does not receive during the 90-day period beginning on the date of the publication any nomination to include the land concerned in the next competitive lease sale; and

(3) determines there is no competitive interest in the geothermal resources in the land to be leased.

(g) AREA SUBJECT TO LEASE FOR DIRECT USE.—

(1) IN GENERAL.—Subject to paragraph (2), a geothermal lease for the direct use of geothermal resources shall cover not more than the quantity of acreage determined by the Secretary to be reasonably necessary for the proposed use.

(2) LIMITATIONS.—The quantity of acreage covered by the lease shall not exceed the limitations established under section 7.

* * * * * * *

SUPPLEMENTAL, MINORITY, ADDITIONAL, OR DISSENTING VIEWS

None.

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